Supreme Court of the United States

OCTOBER TERM, 1960

No. 314.

PORTSMOUTH BASEBALL CORPORATION,

Petitioner,

against

FORD C. FRICK, Commissioner of Baseball, BALTIMORE BASEBALL CLUB, INC. *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION.

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Opinions Below.

The opinion of the District Court (App. of Pet. 26-28) is reported at 171 F. Supp. 897. The opinion of the Court of Appeals (App. of Pet. 23-25) is reported at 278 F. 2d 395.

Jurisdiction.

The jurisdictional requisites are adequately set forth in the petition.

Question Presented.

Whether, in an action to recover damages for an alleged breach of a private contract, the courts below correctly construed the contract in deciding that the broadcasting and telecasting of Major League baseball games into territory occupied by a Minor League baseball club does not violate Major-Minor League Rule 1(a) which prescribes the procedure by which the territory occupied by a Minor League club may be occupied by and included in a Major League and the Minor League club thereby excluded?

Petitioner has "pointed out for consideration" three questions (Pet. 2). These "questions presented" are nothing more than statements of arguments, in the form of rhetorical questions, which Petitioner unsuccessfully urged below in support of its construction of the contract. Moreover, these so-called questions assume the existence of facts of which there is no proof in the record.

Statutes Involved.

No statute of the United States or of any State is involved in this action.

Statement of the Case.

Petitioner (Plaintiff and Appellant below) brought a common law action for the alleged breach of a private contract known as Major-Minor League Rule 1(a). The jurisdiction of the District Court was invoked, and rested, solely upon the ground of diversity of citizenship. (Pet. 4, App. to Pet. 14; 28 U. S. C. 1332.)

Petitioner, at the time the complaint was filed on November 22, 1954, was a Minor League baseball club

operating in Portsmouth, Virginia, as a member of The Piedmont League. The Respondents (Defendants and Appellees below) are Ford C. Frick, Commissioner of Baseball; The National League of Professional Baseball Clubs, commonly known as the "National League", and its eight constituent clubs; The American League of Professional Baseball Clubs, commonly known as the "American League", and its eight constituent clubs. The National and American Leagues are collectively referred to as the "Major Leagues".

The gist of Petitioner's claim, both in the complaint and at the trial, was that the Major-Minor League Agreement and the Major-Minor League Rules made pursuant thereto constituted a contract between the Petitioner and the Respondents (other than Respondent Frick) and that Major-Minor League Rule 1(a) was violated by broadcasts of Major League games which were audible and visible in the territory occupied by the Petitioner (Appendix for Appellant 2a-7a). Petitioner further claimed that the alleged violation of Major-Minor League Rule 1(a) arose out of the fact that the Respondents by practical construction interpreted and applied that Rule "to prohibit appropriation of territory by broadcasting" (Comp. par. 9, Appendix for Appellant 6a).

Major-Minor League Rule 1, as it existed at the time this action was commenced provided as follows (Pl. Ex. 5B, Appendix for Appellant 62a-64a):

"Rule 1.

"Circuits.

"(a) *Protection of National Association Territory.* No territory in which a Minor League franchise is being operated under protection of the

Major-Minor League Agreement or National Association Agreement shall be *included* in any Major League until such Minor League and Minor League Club shall be paid such compensation as shall be mutually agreed upon as just and reasonable compensation for such action. A Major League club desiring to *acquire* Minor League territory must file notice of its intention to do so with the Commissioner between October 1st and December 1st.

"In the event of disagreement as to what constitutes just and reasonable compensation for such action, the Major League desiring to *occupy* the Minor League territory shall notify the Commissioner of their desire and request that the just and reasonable compensation required to be paid, be determined by a board of arbitration. Upon receipt of such notice the Commissioner shall forthwith appoint a board of seven (7) men to consist of one (1) representative of the Minor League involved, one (1) representative of the Minor League Club involved, one (1) representative of the Major League involved, and one (1) representative of the Major League Club involved, the President of the National Association, the Commissioner, and a seventh party to be agreed upon by the aforementioned six or if they cannot agree on a seventh member then the Commissioner shall appoint a seventh member.

"The Commissioner shall designate a time and place for a meeting of such board which meeting shall be held within 30 days of the receipt by the Commissioner of request for appointment of such board.

"The board of arbitration shall after investigation and hearings determine the amount of just and reasonable compensation or other conditions under which the Minor League territory may be *included* in a Major League; and shall notify the interested parties within 10 days after reaching their conclu-

sions. The findings of the board of arbitration shall be final and unless complied with by the Major League Club within thirty (30) days, the territory shall remain Minor League territory.

"Within ten days after the findings of the board have been complied with, the Minor League territory shall be considered Major League territory and have territory protection provided in Paragraph B hereof.

"(b) *Protection of Major League Circuits.* To insure as far as possible the continuance of Major League baseball in cities now able to support it, the existing *circuits* of the Minor League shall not be so changed as to *include* any city in a Major League circuit or any place within five miles thereof without the written consent of the league concerned."[1]

The District Court granted Respondents' motion for a judgment dismissing the action and held that the foregoing Rule (1) is not susceptible of the construction that it applies to broadcasting or telecasting of baseball games in or into Minor League territory and (2) is not ambiguous and, consequently, evidence of an alleged practical construction was not admissible. Nevertheless, out of abundant caution the District Court received the evidence of the alleged practical construction upon which Petitioner relied, and found that such evidence did not support Petitioner's claim (App. to Pet. 27-28).

The Court of Appeals, in affirming, also held that "the contract is plain and definite" and, consequently, that the doctrine of practical construction did not apply. Nevertheless, that court also weighed the evidence upon which Petitioner relied to establish its alleged practical construction, and found that such evidence not only failed to support, but affirmatively disproved, the construction urged by Petitioner (App. to Pet. 22-25).

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[1] Emphasis supplied.

Thus the decisions of both lower courts are based upon two independent grounds: *first*, that there was no breach of the private contract known as Major-Minor League Rule 1(a) when construed in accordance with its plain and unambiguous language and *second*, that, even if the evidence which had been received to prove the alleged practical construction could properly be considered, it did not support, but instead negatived, the Petitioner's interpretation of the contract.

ARGUMENT.

I.

This case does not present, and the petition does not assert, any question of a character which would warrant review by this Court on Certiorari.

In its Rule 19-1(b) this Court has indicated the character of reasons which will be considered in determining whether it will exercise its discretionary power to review a decision of a court of appeals. The petition does not; and could not, claim that any of such reasons is presented by the instant case. Thus it is not, and could not be, claimed that the Court of Appeals (1) has rendered a decision in conflict with a decision of another Court of Appeals on the same matter; (2) or has decided an important state question in conflict with applicable state law; (3) or has decided an important question of federal law which has not been, but should be, settled by this Court; (4) or has decided a federal question in conflict with applicable decisions of this Court; (5) or has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

In Rule 19 this Court has emphasized that a review on writ of certiorari "will be granted only where there are special and important reasons therefor". While Rule 19 also states that the character of reasons enumerated therein do not control or fully measure this Court's discretion, Petitioner does not cite, and Respondents are unable to find, any decision of this Court which would support issuance of the writ in the instant case. This Court has also said that jurisdiction to review cases by way of certiorari "was not conferred upon this Court merely to give the defeated party in the Circuit Court of Appeals another hearing." *Magnum Co.* v. *Coty*, 262 U. S. 159, 163.

II.

No important question of law is presented.

Had there not been diversity of citizenship between Petitioner and Respondents, the District Court would not even have had jurisdiction of the instant case. It does not involve any question under the Federal Constitution or under any federal statute or regulation. It does not involve any important State question, any important, but unsettled, question of federal law, or any conflict of decision.

The decisions of both lower courts in the instant case turned solely upon their analysis and finding of the particular facts involved and upon their construction of a particular private contract in a common law action for breach of contract. The most that Petitioner does or could claim is that the lower courts could, and in the Petitioner's view should, have placed a different construction upon the private contract involved and upon the evidence as to an alleged practical construction of the contract upon

which Petitioner primarily relied to justify its novel interpretation thereof.

Manifestly, the questions which Petitioner seeks to raise, fall far short of that public importance which is necessary to warrant review by this Court on certiorari. Petitioner's bald assertion that the decision of the court below "renders existing, valid contracts of limitless businesses affecting untold wealth completely ineffective and obsolete" (Pet. 5) is wholly unsupported and unsupportable. Indeed, Petitioner does not attempt to give *dehors* the record a single concrete illustration from the allegedly "limitless" but anonymous businesses to which it purports to refer.

In a further attempt to invest the questions which Petitioner seeks to present with a factitious appearance of importance, Petitioner makes an untenable assertion that the holding of the court below "will open the flood gates to a deluge of litigation" (Pet. 6). On the contrary, an opposite decision would provoke ruinous baseball litigation if every broadcast and telecast of a Major League game heard or seen in a Minor League city, were held a breach of contract.

This case involves no departure from established principles of contract construction, either in the enunciations of principles or in their application. Moreover, future actions involving construction of contracts would be decided under State law and, except in so far as the jurisdiction of federal courts can be, and is, invoked upon the ground of diversity, would be decided by State courts.

III.

The decision below is clearly correct.

To demonstrate the correctness of the decision below, nothing, we think, need be added to what is said in the respective opinions of the courts below (App. to Pet. 13-28). Those opinions spell out what seem to us indisputable reasons for the conclusion that Major-Minor League Rule 1(a) cannot be interpreted to apply to the broadcasting or telecasting of games into Minor League territory. Accordingly, this point will be confined to comment on the three questions which the petition poses and discusses as an attack on the decision below.

"*Question One.*—Should not an agreement the basic reason for which is the elimination of competition be deemed to include within its scope public media of communication invented subsequent thereto?" (Pet. 2, 5-6).

This question begs the real question for it rests upon the wholly unsupported premise that the contract involved in this case (Major-Minor League Rule 1(a)) had for its basic purpose the elimination of all competition. There is nothing in the rule or in the record to support this premise, and the argument for it was rejected by the courts below. At the trial, the Petitioner did not introduce one shred of evidence concerning the purpose of Major-Minor League Rule 1(a).

The purpose of the Rule is clear on its face; namely, to provide a procedure (1) for occupation of a Minor League club's territory by a Major League for inclusion in its Major League circuit, with consequent exclusion of the Minor League club therefrom and (2) for compensating the Minor League club and its Minor League for such action. All of the language of the Rule is directed to that purpose

and it contains no broad or general language which could support Petitioner's argument that the Rule was intended to eliminate competition generally or in communication media.

Petitioner seems to argue that the courts below have made a horse-and-buggy decision which will be a vexatious precedent because it did not bring within the terms of an old contract the modern invention of television. A truly vexatious precedent would be set if the newness of television were recognized as a legal excuse for distorting or rewriting a contract into which television (or any other medium of communication, old or new) cannot be fitted. Both courts below specifically recognized that radio and television create new problems for professional baseball, but, as stated by the Court of Appeals (App. to Pet. 25):

> "While contracts may be interpreted with some elasticity to meet change and development during their existence, the contract herein was not adaptable to the drastic changes that have occurred. To apply the particular rule as covering broadcast and telecast competition would be to write a new contract beyond the parties' contemplation and intent. This cannot be done in the guise of judicial interpretation."

"*Question Two.*—Should not the Major-Minor League Rule 1(a) have been interpreted in the light of its context, its purpose and the practical interpretation given by the parties?" (Pet. 2, 6-8).

The plain answer to this question is contained in the opinions of the courts below which found that the Rule in its context was clear and unambiguous and that the practical interpretation given by the parties not only failed to support, but affirmatively disproved, the Petitioner's interpretation.

Petitioner's interpretation of Rule 1(a) would produce absurd results, for it claims that the Rule applies to any broadcast of a Major League game into a Minor League club's territory from any radio or television station located outside that territory (Appendix for Appellant, 50a). Under this interpretation, any broadcast of any Major League games, even from stations located in Major League cities, would violate the Rule if the broadcast could be seen or heard in any Minor League city. The practical effect of this would be to make every Major League radio broadcast and most telecasts a breach of the Rule as interpreted by Petitioner.

On page 2, the petition states that the territorial rights of Petitioner "are clearly defined by contract", but on page 8, it states "Yet, crucial as they are, the existence and meaning of territorial rights are not expressly spelled out in all the relationships of baseball. They are apparently derived from an interpretation of the integrated series of agreements and rules, an interpretation which takes account of and is dictated by the needs and purposes of baseball." In other words, "the territorial rights" which Petitioner claims cover all media are concededly not found in Major-Minor League Rule 1(a), the contract pleaded in the complaint. The rights are to be found, the petition says, in an interpretation of unspecified agreements and rules. The petition does not support this vague "interpretation" by any citation to the record or to other authority.

The decisions below which are based upon the contract pleaded in the complaint cannot properly be challenged by such an unsupported assertion that broader rights exist outside the record.

"*Question Three.*—Should the petitioner be deemed to have intended to bargain away its very existence?" (Pet. 2, 8-11)

This question obviously has no relevance to the proper construction of Rule 1(a). There was no obligation to adopt a rule of any kind. Moreover, Petitioner does not cite and the record does not contain any proof whatsoever as to the circumstances of bargaining surrounding the adoption of Major-Minor League Rule 1(a) or as to any inequality of bargaining power between the parties which adopted the Rule. Petitioner was not in existence when Rule 1(a) was originally adopted in 1903 and it was not a bargaining party when the Rule was amended in 1946 and 1954 without mentioning television. The Rule was adopted and amended by the two Major Leagues and The National Association of Professional Baseball Leagues, the Minor League organization. Petitioner was merely a member of a league which belonged to the National Association. (Appendix for Appellant 16a, 37a-38a, 41a.)

Petitioner's argument under this question is replete with such cryptic phrases as "Constitutional protection", "rights arising from Contracts as well as from the Constitution itself", "invasion of the rights of a party to a contract", "Constitutional Principles enunciated by the Supreme Court", "the spirit and letter of contractual agreements and of the Constitution." (Pet. 9, 10, 11). Nowhere does Petitioner cite a single case which supports any of these statements or even a provision of the Constitution which it purports to invoke.

None of these generalizations has any relevance to the simple problem of contract construction involved in this case.

Conclusion.

For each and all of the foregoing reasons, the petition should be denied.

Respectfully submitted,

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